88-972 (2)

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In The

Supreme Court Of The United States

OCTOBER TERM, 1988

WILFREDO MAISONET,
Petitioner,

v.

STATE OF CONNECTICUT,
Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF CONNECTICUT

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QUESTION PRESENTED

DID THE CONNECTICUT COURTS VIOLATE DAVIS V. ALASKA, 415 U.S. 308 (1974) BY PROHIBITING A DEFENDANT FROM CROSS-EXAMINING A KEY PROSECUTION WITNESS CONCERNING WHETHER HE EXPECTED TO RECEIVE A SPECIFIC REDUCTION IN HIS SENTENCE AS PAYMENT FOR HIS TESTIMONY?

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OPINIONS BELOW

The opinion of the Connecticut Appellate Court is reported at 16 Conn. App. 89 (1988) as is found in petitioner's appendix at A1-A12. The order of the Connecticut Supreme Court denying petitioner's petition for certification is reported at 209 Conn. 816 (1988) and is found in petitioner's appendix at B1.

STATEMENT OF THE CASE

On February 1, 1985, Trooper Julio Fernandez, a trooper with the Connecticut state police statewide narcotics task force, entered a market in Meriden, Connecticut, owned by the petitioner, and purchased one-half gram of cocaine from Luiz Colon and the petitioner. The petitioner and Colon[1] were arrested and charged with the crimes in connection with the sale.

At the petitioner's trial, Colon

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[1] Prior to the petitioner's trial, Colon plead guilty to selling narcotics in connection with the transaction involved in this case, as well as to a charge involving another narcotics transaction, and to a violation of probation. At the time of the petitioner's trial, Colon had not yet been sentenced on these charges.

testified for the state regarding the drug transaction.[2]

On direct examination, Colon testified that he had pleaded guilty to the crime for which the defendant was being tried as well as several other crimes, including a violation of probation. Colon further testified that he was incarcerated awaiting sentencing and that, although his cooperation with the State would be made known to the sentencing judge, there was no recommendation as to any particular sentence and no indication as to what sentence would be imposed. On cross-examination, the defendant elicited from Colon that he was facing a total possible sentence of thirty-five years and that although no

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[2] The transcript of Colon's testimony is reproduced in Appendix A.

deals have been made he expected his testimony to help him out. The defendant was not permitted to ask Colon whether "there was ever a time when [Colon was] offered any particular sentence" and what Colon thought the best for him would be.

On appeal, the Connecticut Appellate Court held that the defendant "had a sufficient opportunity to cross-examine the witness and thereby attempt to convey to the jury the basis for any bias or prejudice the witness may have had while testifying on behalf of the state." State v. Maisonet, 16 Conn. App. at 95.

The Connecticut Supreme Court denied the petitioner's petition for certification. State v. Maisonet, 209 Conn. at 16.

The petitioner now petitions for a writ of certiorari to review the issue of whether "the Connecticut Courts violated Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105 (1974) by prohibiting a defendant from cross-examining whether he expected to receive a specific reduction in his sentence as payment for his testimony?"

REASON FOR DENIAL OF THE WRIT

I. THE PETITIONER'S CLAIM IS CONTROLLED BY ESTABLISHED PRECEDENT OF THIS COURT

The petitioner's claim is premised on the assumption that this Court's opinion in Davis v. Alaska, 415, U.S. 308, 94 S.Ct. 1105 (1974) mandates that the defendant be given unlimited right to cross-examine a witness regarding possible motive or bias. The respondent submits that this premise is erroneous,

thus providing an inadequate basis for the writ of certiorari.

In Davis v. Alaska, 415 U.S. 308, 315-16 this Court stated that "[t]he main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination." An important function of the right of cross-examination is the exposure of a witness' motivation in testifying. However, as this Court has expressly held, the Confrontation Clause of the Sixth Amendment does not prevent "a trial judge from imposing [limits] on defense counsel's inquiry into the potential bias of a prosecution witness." Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431, 1435 (1986). Rather, "the Confrontation Clause guarantees an opportunity for effective

cross-examination, not cross-examination that is effective in whatever way, and to whatever extent the defense might wish." Delaware v. Van Arsdall, supra quoting Delaware v. Fensterer, 474 U.S. 15, 106 S.Ct. 292, 295 (1985)(per curiam)(emphasis is original). Thus, a trial judge retains wide discretion to impose reasonable limits on such cross-examination. Delaware v. Van Arsdall, supra. The defendant's confrontation right is satisfied if, on cross-examination, defense counsel is "permitted to expose to the jury the facts from which jurors as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness." Davis v. Alaska, 415 at 318.

In the present case the constitutional standard was satisfied and the Connecticut Appellate Court properly found no error in the trial court's ruling. The jury had been fully apprised that Colon was awaiting sentencing for several crimes including the one for which the defendant was being tried. The defendant was given sufficient opportunity to cross-examine Colon to show bias, interest and motivation. Colon testified numerous times that although he had not received any promises regarding a possible sentence, he did expect leniency in exchange for his testimony. The inquiries regarding whether Colon had ever been promised a specific sentence and his opinion as to what the best for his was, were both cumulative and collateral. Because the

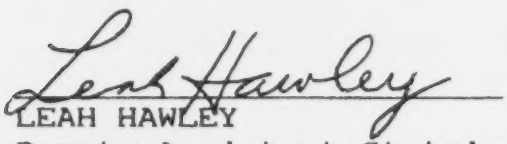
essential point, that Colon was hoping for leniency, had been effectively placed before the jury, it cannot be said that the defendant was prevented from exposing to the jury facts from which jurors could appropriately draw inferences relating to Colon's reliability or from making a record from which he could argue why Colon might be biased. See, Davis v. Alaska, 415 U.S. at 318. Therefore, the limitation imposed on cross-examination both conformed to the decisions of this Court and violated no constitutional right, and consequently, the petitioner's claim is meritless.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for a writ of certiorari.

Respectfully submitted.

THE RESPONDENT
STATE OF CONNECTICUT

BY: 

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APPENDIX

APPENDIX A

(Discussion held off the record.)

MR. VANKIRK: Objection is withdrawn.

Q Mr. Colon, I believe I indicated, had you engaged in this type of transactions on prior occasions?

A And those occasions were involved with the defendant, Mr. Maisonet?

A Yes, sir.

Q And, in fact, you had an ongoing arrangement with Mr. Maisonet that you would be present during these deals, is that correct?

A Yes, sir.

Q Mr. Colon, you're presently residing at the Whalley Avenue Jail, are you not?

A Yes, sir.

Q In fact, Mr. Colon, you were arrested and charged with the sale to that undercover police officer that you have just described?

A Yes, sir.

Q Have you entered a plea on that charge?

A Yes, sir.

Q What was that plea? What did you plead?

A Guilty.

Q In fact, there was an additional count involving another narcotic transaction that you also pled guilty to, is that not right?

A Yes.

Q And at the time you entered those pleas, there was also a period of probation suspended on your -- on a previous conviction, is that right?

A Yes, sir.

Q Mr. Colon, have you been sentenced on any of those incidents?

A Not yet.

Q Any of those guilty pleas?

A Not yet.

Q And Mr. Colon, at this point the understanding you have is that you have entered pleas to those counts and there is no recommendation for any particular sentence by the State is that correct?

A Yes, sir.

Q And the judge hasn't indicated to you what he intends to impose, is that correct?

A Yes, sir.

Q In fact, Mr. Colon the situation is at this point you have entered guilty pleas, the fact that you

have cooperated with the State will be made known to the sentencing judge and the judge is then free to impose whatever sentence he feels fair, is that right?

A Yes, sir.

MR. HADDEN; If you can just have a moment, your Honor.

That's all I have, your Honor.

THE COURT: It will be necessary then that we take a recess at this point.

(Whereupon, the Court stood in recess.)

(Whereupon, the jury entered the courtroom.)

THE COURT: Stipulate, gentlemen?

MR. HADDEN: Yes, your Honor.

MR. VANKIRK: Yes, your Honor.

THE COURT: You may proceed.

CROSS EXAMINATION BY MR. VANKIRK:

Q Mr. Colon, how are you this morning?

A Fine.

Q Tell me again how this went down, this event on February 2 -- Excuse me, February 1, 1985. Who did what, I wasn't listening.

A I went walking in the store for Mr. Maisonet. Mr. Maisonet went into the store with the other guy, I don't know the guy.

Q Okay.

A He tell me this guy want to buy some stuff, cocaine. So he tell me how much you going to charge. I say fifty dollars.

Q Who told you how much you are

going to charge?

A Maisonet. He ask me that.

Q Okay.

Q Have you discussed your testimony with anyone today, today's testimony?

A Yes, sir.

Q And who did you discuss it with?

A Talk to my lawyer. I think that's the better way to do.

Q Excuse me?

A I talked to my lawyer because I want to try to do the best for me.

Q For yourself, okay.

A Yes, sir.

Q How about the prosecutor, did you talk to the prosecutor?

A Yes, sir.

Q Did you talk to any police

officers?

A No, sir.

Q Now, speaking of doing the best for yourself, you have a number of cases, or you did until you pled guilty, a number of cases pending, did you not?

A Yes, sir.

Q And one of those was a violation of probation, in Waterbury.

A In Waterbury.

Q We will go on. You also have a sale of narcotics, another case other than this one, sale of narcotics case pending, is that right?

A Yes, sir.

Q And you had this case pending?

A Yes, sir.

Q Was the sale of narcotics for the assault in the second degree--excuse me.

A Yes.

Q Was the probation for the assault in the second degree in Waterbury?

A Yes, that was self-defense.

Q That was self-defense?

A Yes, sir.

Q But you pled guilty to it?

A Yes.

Q And that was some time around June of '84, five years suspended, five years probation?

A Yes, sir.

Q Just want to make sure I have the right one. Also, you were arrested on December 18, 1985, for sale of cocaine?

A Be arrested for that?

Q Yes.

A December?

Q If I am reading this properly. Maybe it's incorrect. When were you arrested?

A Not this one?

Q No, the other one.

A I spent time in Cheshire, one year in Cheshire.

Q That was for the weapon in the motor vehicle, wasn't it?

A Yes, sir.

Q Did some time in Cheshire. When were you arrested for the other sale of cocaine?

MR. HADDEN: Well, your Honor, I don't think the date of his arrest is relevant. I am objecting.

MR. VANKIRK: I am maybe belaboring the point.

THE COURT: I am going to

allow the answer. Go ahead.

A I spent my time in Cheshire about in November. I went to Cheshire. I went in Cheshire for the weapon in motor vehicle. So he put me in possession of narcotics. He give me one year for that. I been in Cheshire, lock up in Cheshire. When he went to Cheshire in November he tell me I got two more cases, two more charges.

Q Who is he?

A He went to Meriden Court, to Cheshire to pick me up in jail.

Q Well, you were in Cheshire and you got served with two more warrants, is that what you said?

A Yes, sir.

Q They were both for the sale of narcotics?

A Yes, sir.

Q One of which was this case and one of which was another case?

A Yes, sir.

Q And you pled guilty to both of those?

A Yes.

Q And have you pled guilty to the violation of probation?

A Yes, sir.

Q Are you aware that you owed five years on the violation of probation?

A Yes, sir.

Q I mean, once you agree to a violation you could do five years?

A Yes, sir.

Q Did you know or are you aware that the maximum penalty for possession or sale of narcotics is 15 years under this statute?

A Yes, sir.

Q And you had two of those counts?

A Yes, sir.

Q So you have a total possible pending sentence against you right now of 35 years?

A Yes, sir.

Q Now, you made a deal with them of no deal, is that what you are saying?

A No deals.

Q You are just sitting there hoping somebody will cut you a break?

A Yes, sir.

Q Was there ever a time when you offered any particular specific sentence?

A No, sir.

MR. HADDEN: I will object to that.

THE COURT: Sustained.

MR. VANKIRK: Well, the grounds for the objection weren't stated.

MR. HADDEN: Clearly not relevant, your Honor, to anything he had testified to as to what he has pled guilty to and what the arrangement is with the Court and anything that was discussed prior to that time if totally ir-relevant.

MR. VANKIRK: Well, perhaps maybe I could do it in a little different way that would make it seem more relevant. I will rephrase the question.

Q What do you expect from this?

A The best for me.

Q The best for you. What do you think the best for you is?

MR. HADDEN: I object. What he perceives the best he can get, I don't know whether that has any relevance to this man's testimony.

THE COURT: Well, I will sustain the objection.

MR. VANKIRK: May I have an exception, your Honor?

THE COURT: It may be noted.

Q But you expected this testimony here to help you out?

A Yes, sir.

Q You expect consideration?

A Yes, sir.

Q Now, you were pretty good

friends with Mr. Maisonet, weren't you?

A Yes, sir.

Q And for quite a long time?

A I would say a year, three months.

Q A year and three months?

A Yes.

Q And he let you drive his car?

A Yes, sir.

Q Did he let you live in his house from time to time?

A Yes, sir.

Q And he gave you a job at the store?

A Yes, sir.

Q Did he put up bail for you from time to time?

A One time.

Q Was there anytime when he refused to put up questions, your Honor.

REDIRECT EXAMINATION BY MR HADDEN:

Q Mr. Colon, the understanding you have with the Court is that you will testify truthfully in this proceeding, is that right?

A Yes.

Q And you're hopeful that that will be helpful to you?

A Yes, sir.

Q But you have no idea as far as whether it will be helpful and to what extent?

A Yes.

Q And you did have an attorney who represented you on this case, correct?

A Yes, sir.

Q And you indicated you had spoken to him regarding your testimony in this case?

A Yes, sir.

Q And you also indicated you spoke with me about your testimony in this case?

A Yes, sir.

Q Now, did either myself or your defense counsel tell you how to testify, what to say here today?

A No, sir.

Q So your testimony today regarding the events of February the 1st, 1985, that is your best recollection of T. at 112-114, 118-123, 130.